



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,580	05/14/2004	Paul K. MEEKER	43064-0030	3579

24115 7590 06/26/2006

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
50 S. MAIN STREET
AKRON, OH 44308

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
----------	--------------

3636

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/709,580	Applicant(s) MEEKER ET AL.	
	Examiner Joseph F. Edell	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 33-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06/07/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03 April 2006 has been entered.

Election/Restrictions

2. Newly submitted claims 33-37 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The invention of previously submitted claims 1-32 and the inventions of newly submitted claims 33-37 are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)).

The combination of claim 1-32 does not require the particulars of the subcombination of claim 33 as claimed because the car seat and back member need not have a surface area whereby extending the back area from a fully contracted

position to a fully extended position increases the surface area of the back area. The subcombination of claim 33 has separate utility such as in a car seat without inwardly-projecting indentations.

The combination of claim 1-32 does not require the particulars of the subcombination of claim 34 as claimed because the car seat and back member need not have inwardly-projecting indentations of fixed dimensions. The subcombination of claim 34 has separate utility such as in a car seat without a means for selectively positioning and retaining the movable lower occupant back supporting surface relative to a fixed component.

The combination of claim 1-32 does not require the particulars of the subcombination of claim 35 as claimed because the car seat and back member need not have the number of the indentations to remain constant when moving the lower area of the movable component. The subcombination of claim 35 has separate utility such as in a car seat without a means for selectively positioning and retaining the movable lower occupant back supporting surface relative to a fixed component.

The combination of claim 1-32 does not require the particulars of the subcombination of claim 36 as claimed because the car seat and back member need not have a lower area or lower surface with contoured sides. The subcombination of claim 36 has separate utility such as in a car seat without inwardly-projecting indentations.

The combination of claim 1-32 does not require the particulars of the subcombination of claim 37 as claimed because the car seat and back member need

not have non-supportive indentations. The subcombination of claim 37 has separate utility such as in a car seat without a means for selectively positioning and retaining the movable lower occupant back supporting surface relative to a fixed component.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 33-37 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

3. Claims 1, 11, and 15 are objected to because of the following informalities:
 - a. claim 1, line 8, "upper area" should read --upper headrest area--;
 - b. claim 1, line 9, "shoulder belt guide" should read --shoulder belt--;
 - c. claim 11, line 12, "telescoping" should read --movable-- for consistency throughout claim 11;
 - d. claim 11, line 14, "its retracted and extended positions" should read --a retracted position and an extended position-- as this positions have not previously been recited;
 - e. claim 15, line 1, "said outer contour" should read --an outer contour-- as the outer contour of the movable component has not been previously recited.
- Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6-10 and 28-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 6 and 28, the recitation of “two generally horizontal and symmetrical slots” is unclear rendering the scope of the respectively claims indefinite. It is unclear whether these slots are respectively the same as the inwardly-projecting indentations of independent claims 1 and 23.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11-16 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,819,278 to Ramos.

Ramos discloses a seat that includes all the limitations recited in claims 11-16 and 23-25. Ramos shows a seat having a seat member (commode C - see Fig. 3), a back member P, 11,16 connected to the seat member, a fixed component (stanchion pipe P is a fixed component of the commode back member) of the back member

Art Unit: 3636

including a contour in cross-section (stanchion pipe P has an inherent circular cross-section with an arching contour), a telescoping movable component 11,16 of the back member overlapping the fixed component (telescopic, overlapping portions being bracket and encircling clamps 22 of the movable component) by attaching in front of the fixed component and including a fixed upper headrest area 11 (see Fig. 2) with a pair of forward extending wings (as shown in Fig. 4) and an opposed lower surface 16 with an inner contour in cross-section which mates and nests with the outer contour of the fixed component (the arching contour of the cross-section of the encircling clamp 22 mates with the arching contour of the stanchion pipe P), and an outer contour of the movable component has a pair of raised surfaces (as shown in Figure 4 as well as arm rests 21).

Ramos shows a back member wherein the upper headrest area and the lower surface being separated by an optional bridge member 12 forming a pair of fixed size inwardly-projecting indentations (void areas one each side of the bridge member between the lower part of the headrest area and the upper part of the movable component - as shown in Fig. 1) for use with shoulder belt 18 through one of the indentations, movement of the fixed and telescoping components relative to each other provides contiguous essentially parallel surface support for an occupant's back when the movable component is both in retracted and extended positions without increasing a size of the indentations (retracted position being when accommodating a relative short occupant and extended position being when accommodating a relative tall occupant), and means for selectively positioning and retaining the movable component relative to the fixed components (the encircling clamps 22 of the movable component are

functionally equivalent to the positioning and retaining structure described in the instant application). Please note, claim 11 limitation "said fixed and telescoping components relative to each other provides contiguous essentially parallel surface support for an occupant's back" is interpreted in light of the drawings (seat back 18 and 62) as requiring the spaced fixed and telescoping components be parallel but need not be in the same plane.

With respect to claim 23, Ramos shows a back member with the upper headrest area 11 in invariant fixed relationship to the lower area 16 and the fixed and movable components in overlapping essentially gapless relationship with respect to each other (the encircling clamps 22 of the movable component 11, 16 clamp onto the fixed component P to leave no gaps with the components)

With respect to the preamble of claim 11 reciting a "car seat" and of claim 23 reciting an "extendable back member for use with a car seat," these preambles do not impart a structure that would distinguish the seat of the instant application from the seat of Ramos. The seat of Ramos would function as a car seat in a mobile home, locomotive, or bus wherein these cars regularly employ commodes. Moreover, a preamble is generally not accorded any patentable weight where it merely recites the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the structural limitations are able to stand alone.

8. Claims 1-8, 10-20, 22-30, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,854,639 to Burleigh et al.

Burleigh et al. disclose a car seat that includes all the limitations recited in claims 1-8, 10-20, 22-30, and 32. Burleigh et al. show a seat having a seat member 72 (see Fig. 5), a back member 78 connected to the seat member, a fixed component (see Diagram A below) of the back member including raised contoured sides 80,82 (see Fig. 6) and contoured surface in cross-section, a movable component 90 of the back member including raised contoured sides 92,94, capable of movement from a retracted position to an extended position, and overlapping the fixed component, an upper headrest area of the movable component (see Diagram A) with a pair of forward extending wings, and an opposed lower area (see Diagram A) separated from the upper headrest area by a pair of fixed size inwardly-projecting indentations 126,128 (see Fig. 8 and Diagram A) to accommodate a shoulder belt, fixedly connected to the upper headrest area, and including a surface and a contour in cross-section mating the contoured surface of the fixed component.

Burleigh et al. show a back member wherein the upper headrest area being in invariant fixed relationship to the lower area and separated by the indentations (see Diagram A), the movable component is attached in front of the fixed component, the fixed and movable components being in overlapping essentially gapless relationship with respect to each other with sliding movement between the components at both the retracted and extended positions (sliding movement of shoe parts 118 along tracks 96,98 - see Fig. 6 - allowing for the gapless relationship), the sliding movement between

Art Unit: 3636

the components does not increase a size of the indentations between the upper headrest area and lower area, and means for selectively positioning and retaining the movable component relative to the fixed components (the shoe parts and tracks are functionally equivalent to the positioning and retaining structure described in the instant application) that permits incremental discrete movement or infinitely variable movement and is a pair of outwardly biased shafts 118 capable of locking, and telescoping movement of the movable component relative to the fixed component which is fixed by a length of longitudinal channels 96,98 in the fixed component.

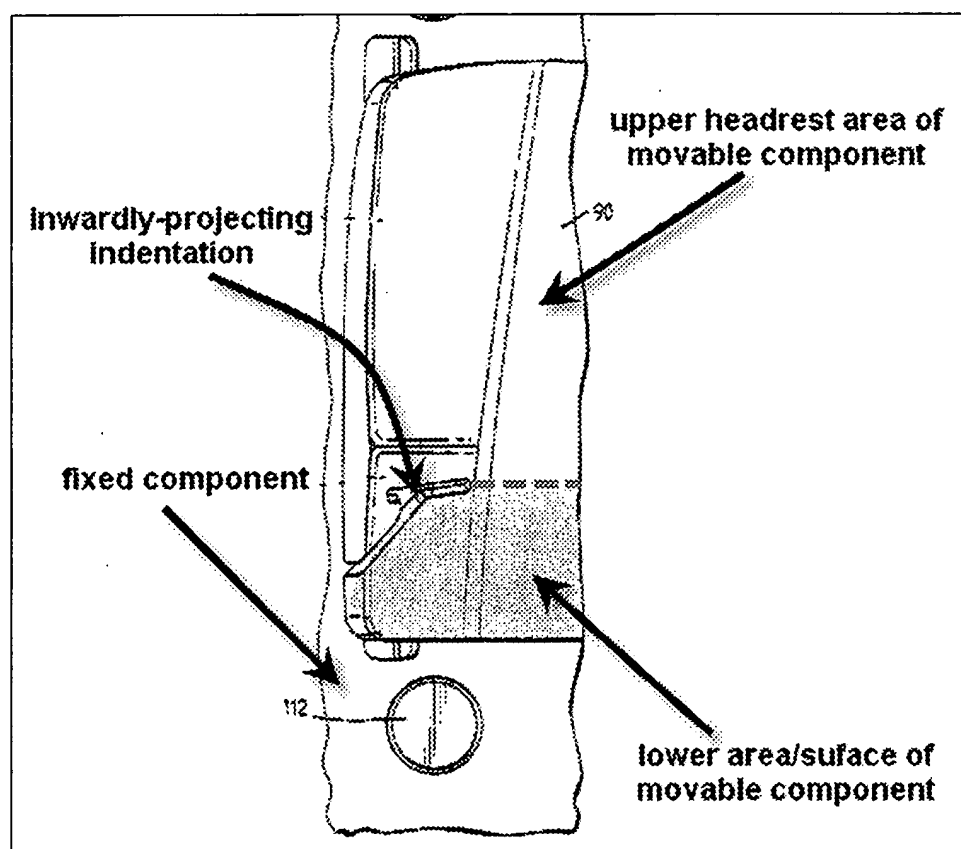


Diagram A - Annotated Figure 8 of Burleigh et al.

Claims 8, 20, and 30 recite "locking means," which fails to invoke 35 U.S.C. 112, sixth paragraph, because this recitation does not meet the three prong analysis set forth in MPEP § 2181.

With respect to claim 11 and 13-15, movement of the movable component 90 of Burleigh et al. relative to the fixed component 78 provides contiguous essentially parallel surface support for an occupant's back without increasing the size of the indentations, the inner contour of the movable component mates and nests with an outer contour of the fixed component, and an outer contour of the movable component has a pair of raised surfaces for side support of the occupant.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9, 21, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burleigh et al. in view of U.S. Patent No. 6,135,553 to Lovie et al.

Burleigh et al. disclose a car seat that is basically the same as that recited in claims 9, 21, and 31 except that the lock lacks mating teeth and grooves, as recited in the claims. Lovie et al. show a car seat similar to that of Burleigh et al. wherein car seat has a fixed component 16 (see Fig. 2), a movable component 32,34 capable of

Art Unit: 3636

movement from a retracted position to an extended position, and a locking mechanism with a track 44 (see Fig. 3) passing through the fixed component and including mating teeth 50,52 and grooves 54,56. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the car seat of Burleigh et al. such that the shoe parts and tracks configuration includes mating teeth and grooves, such as the car seat disclosed in Lovie et al. One would have been motivated to make such a modification in view of the suggestion in Lovie et al. that the mating teeth and grooves of the locking mechanism provides greater control of the height adjustment of the movable component and prevents unwanted movement of the movable component.

Response to Arguments

11. Applicant's arguments filed 03 April 2006 have been fully considered but they are not persuasive. With respect to amended claims 1 and 23, Applicant argues that Burleigh et al. fails to teach retaining the full back support for the occupant while raising the head protection area. However, the claims 1 and 23 do not recite or imply that the lower area/surface of the movable component is constructed to fully support the back of the occupant. The embodiment of Burleigh's Figures 5-8 shows a lower area/surface being invariable fixed to the upper headrest area. It appears that the only distinguishing characteristic of the lower area of Burleigh et al. and the lower area of the instant application is the surface area of lower area of the instant application is larger.

Regarding page 3 of Applicant's Remarks filed 03 April 2006, Applicant's arguments regarding the deficiencies of Burleigh et al. relate to the embodiment of Figures 1-4, which is not utilized in the above rejection.

Applicant's arguments with respect to claims 9, 21, and 31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to car seats:

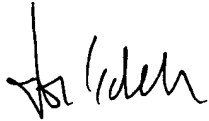
U.S. Pat. No. 4,161,337 to Ross et al.	U.S. Pat. No. 6,030,047 to Kain
U.S. Pat. No. 6,273,509 to Reithmeier et al.	U.S. Pat. No. 6,491,348 to Kain
U.S. Pat. No. 6,623,074 to Asbach et al.	U.S. Pat. No. 7,021,710 to Kain et al.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 3636

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Joe Edell". The signature is stylized with a large initial "J" and a cursive "Edell".

Joe Edell
June 21, 2006